MOTION FILED NOV 7 1958

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DEC
JAMES R.

IN THE

Supreme Court of The United States

OCTOBER TERM, 1958

No. 10, Original

UNITED STATES OF AMERICA,
Plaintiff,
v.
STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

MOTION OF THE STATE OF FLORIDA FOR LEAVE TO FILE REPLY BRIEF TO GOVERNMENT'S REPLY BRIEF

FLORIDA'S REPLY TO GOVERNMENT'S REPLY BRIEF

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SOLICITORS FOR THE STATE OF FLORIDA

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Pursuant to the order entered on April 14, 1958, the State of Florida moves for leave to file the attached reply brief.

As grounds for this motion, the State of Florida shows the Court that the Government's Reply Brief filed on September 15, 1958, contains new matters which this State has not heretofore had the opportunity to answer. Specifically said Reply Brief includes two additional letters, one from Mr. Adrian S. Fisher, a Reporter for the American Law Institute, and the other from the Honorable John Foster Dulles, Secretary of State of the United States, and arguments based on said new letters. Said Reply Brief also includes, for the first time, citations to a report of a subcommittee of the 82nd Congress and to opinions of this Court not heretofore cited and new arguments in connection with said new citations.

The State of Florida shows the Court that a full and fair consideration of this cause requires that she be permitted to answer the new matters contained in the Reply Brief for the United States. This motion and the attached Reply Brief are presented to the Court as soon as they could be prepared and printed and before this cause is set for hearing.

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FLORIDA'S REPLY TO GOVERNMENT'S REPLY BRIEF

New subject matter presented in Reply Brief. —The plaintiff, United States of America, attached to her Reply Brief as exhibits thereto two letters: one from Adrian S. Fisher, to the Solicitor General of the United States, bearing date of September 5, 1958, and the other from the Secretary of State of the United States, bearing date of September 8, 1958 (Reply Brief* 97-99), each letter being subsequent to the filing of the Government's main Brief herein, and each relating to the Government's contention that the seaward international boundary of the United States is limited to three geographic miles and

*(The Government's Reply Brief will be referred to herein as "Reply Brief".)

may not extend beyond such distance. These letters are used by the Government, as new and additional material to convince this court that state and international boundaries, including those mentioned in the Submerged Lands Act, are limited to the international boundary as fixed and determined by the State Department of the United States, thereby limiting the grants made by the Submerged Lands Act to not more than three geographic miles into the Gulf of Mexico, notwithstanding language included in the said Submerged Lands Act purporting to permit the establishment of seaward boundaries in the Gulf of Mexico, as defined in the said Submerged Lands Act, extending three marine leagues into the said Gulf of Mexico.

The Government uses these letters in its attempt to show that "although Congress could have measured the extent of its grant of submerged lands to the states in any way it chose, it did choose to limit the grant to state boundaries as they existed when the states entered the Union or as approved by Congress prior to the Submerged Lands Act. Since State boundaries cannot exceed the national boundary the national boundary is necessarily an implicit limitation on the grant as Congress chose to define it." (Reply Brief, page 19). In other words, the Government now contends that the definition of "boundaries" as defined in the Submerged Lands Act is limited

by and must be construed in harmony with the Secretary of State's views of what he thinks the international boundary may be under the rules of international law. These two letters, as construed by the Government in its Reply Brief, nullify the references in the Submerged Lands Act to "boundaries" extending three marine leagues seaward and in lieu substitutes an absolute boundary of three geographic miles by reason of the letters of the Secretary of State of the United States to the Attorney General of the United States. In other words, the Government is now asking this court to follow the findings of the State Department upon the question of seaward boundaries according to its construction of what it would like the rule of international law to be in a domestic issue. If this court should accept this theory of the Government then it must take directions in its decision of the case from an agent of the Department of State of the Plaintiff. The State Department would seem to be an interested party in this litigation.

The Government also uses the above letters as a basis for the further contention that the reference in the Submerged Lands Act to state boundaries as "approved by the Congress" prior to the enactment of the said Submerged Lands Act is limited by the rule of the Secretary of State as reflected in the said letters and former

exhibits to the main brief of the Government. The Government uses the said two letters as a basis in its Reply Brief to argue that

> "it is the position of the United States that the national boundary, as fixed by the political branches of the Government in their conduct of foreign relations, **and as recognized in international law,** is controlling in this case by reason of the Congressional limitation in the Submerged Lands Act on the grant to historic boundaries." (emphasis supplied; Reply Brief, page 2).

and that,

> "the United States asserts that it is not international 'law' in the abstract, but the international position of the United States, that controls." (Reply Brief, page 3).

and further that the international position of the Secretary of State controls, in fact, without regard to what international law actually is on the question; and that

> "there is also in issue with Florida the effect to be given the boundary provision in the Florida Constitution at the time its representation in Congress was reestablished after the Civil War." (Reply Brief, page 5).

On page 25 of Reply Brief the Government argues that,

> "the rule of international law which limits the grant in the Submerged Lands Act is determined by the foreign policy actually followed by the United States at the critical times, not the policy which it is now asserted could have been followed legally by this country."

It is further contended by the Government, on page 27 of its Reply Brief, that,

> "it is the court's role to find and apply the pertinent rule of international law as accepted and applied by the United States,"

with the further contention that his letter of September 8, 1958, together with other letters, rules and findings of the Secretary of State, must be taken as exclusive evidence of the rule contended for.

Questions raised and argued based on letters. —The Government basing additional arguments upon the letters of September 5 and 8, 1958, as supplemental to other letters, documents and papers of the Secretary of State and other agents of the executive department mentioned in the Government's main Brief, further argues that,

1. Any rule of international law, as ascertained and determined by the Secretary of State, as to international boundaries, notwithstanding the boundaries mentioned in the Submerged Lands Act, is binding upon the Court and determinative of the issues in this case.

and that,

2. The boundaries of the Gulf States, as they existed at the time such states became members of the Union, or as approved by the Congress prior to the Submerged Lands Act, must be determined by international law as determined and declared by the Secretary of State.

The letters of September 5 and 8, 1958, are used by the Government in its Reply Brief as authority for its contention that the term "boundaries" as used in the Submerged Lands Act means boundaries under the international law as determined and declared by the Secretary of State. Neither the said letter of September 8, 1958, nor the letter of June 15, 1956, from the Secretary of State, attached to the main Brief of the Government as appendix "B", are documents arising from international relations administered by the Secretary of State writing such letters, but is an opinion of his based upon a limited number of documents mentioned by him. These

letters together amount to an attempted non-contemporaneous after the fact judicial determination of what the international law was on a prior date, or dates.

ARGUMENT

First point, as contended by the government.

> Any rule of international law, as ascertained and determined by the Secretary of State, as to international boundaries, notwithstanding the boundaries mentioned in the Submerged Lands Act, is binding upon the Court and determinative of the issues in this case.

Florida's contention.—The State of Florida says that the above statement or argument is clearly untenable. Foreign policy of the United States is determined by the political branches of the Government, that is, the executive and the legislative, and not by the Secretary of State (Oetjen v. Central Lumber Company, 246 U. S. 297, text 302, 38 S. Ct. 309, 62 L. ed. 726, text 732). The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations. He makes treaties with the advice and consent of the Senate, although he alone negotiates. The Secretary of State is the mere agent of the President, and although his actions as such secretary are pre-

sumed to be with the advice and consent of the President, any views of the Secretary of State which conflict with those of the President must give way to those of the President (United States v. Pink, 315 U. S. 203, text 229, 62 S. Ct. 552, 86 L. ed. 796, text 817; United States v. Curtiss-Wright Corporation, 299 U. S. 304, text 316-320, 57 S. Ct. 216, 81 L. ed. 255, text 261-263). Although the State of Florida contends that international law and international boundaries are not involved in the construction and administration of the Submerged Lands Act, she further contends that the Submerged Lands Act reflects executive views on this point in direct conflict with the alleged views of the Secretary of State. The said Submerged Lands Act is a policy of the political department — the legislative and executive — of the United States that, for the purposes of the said Act, a state's seaward boundaries in the Gulf of Mexico may upon a due showing of the statutory criteria be found to extend seaward into the Gulf of Mexico three marine leagues instead of three geographical miles, for the limited purposes spelled out in said act.

The Government's contention.— The Government in its Reply Brief contends that "it is the Court's role to find and apply the pertinent rule of international law (as to seaward state and national boundaries) as accepted and applied

by the United States," by and through its State Department. That "the domestic issue was deliberately made by Congress to depend upon the foreign relations of the United States (as determined and declared by the State Department), and on this the courts will (must) accept the word of those vested with authority over foreign relations." (parenthesized words and phrases supplied; Reply Brief, pages 28 and 29). The Government makes the statement that boundaries, as defined in the Submerged Lands Act, are limited to three geographic miles, alleges that the court is bound by that statement, and attempts to justify that statement by reference to past correspondence, statements and documents made or issued by the State Department of the United States.

Organ of the federal government in field of international law. — "The President alone has the power to speak or listen as a representative of the nation. He makes treaties with the advice and consent of the Senate; but he alone negotiates . . . the President is the sole organ of the nation in its external relations, and its sole representative with foreign nations . . . He has his agents in the form of diplomatic, consular and other officials . . . . " (United States v. Pink, 315 U. S. 203, text 229, 62 S. Ct. 552, 86 L. ed. 796, text 817; United States v. Curtiss-Wright Corporation, 299 U. S. 304, text 316-320,

57 S. Ct. 216, 81 L. ed. 255, text 261-263). It, therefore, is quite evident that the President, being the "sole organ of the federal government in the field of international law," is the head of the executive department, so that his actions in this field, when in conflict with the views of any of **his agents in the form of diplomats, consuls or other officials,** even including the Secretary of State, **must control.** For example, when the views of the Secretary of State, or other agent, in the field of international law, conflict with or differ from the views of the President in the same field or fields, the views of the President must control.

The President, when he approved the Submerged Lands Act, doubtless was of the opinion, and by such approval did hold that the said Act violated no rule of international law, otherwise he would have refused to approve and sign the legislation. Congress, with the approval and consent of the President, has authorized a seaward boundary in the Gulf of Mexico three marine leagues from the coast line, for specific limited purposes through the passage and approval of the Submerged Lands Act, dependent only upon boundary descriptions at the time of statehood or by the approval of the Congress PRIOR ~~subsequent~~ to the enactment of the Submerged Lands Act. The President and Congress have, by the Submerged Lands Act, declared that the

Gulf States, **for the purposes of said act,** have state seaward boundaries as provided in their constitutions and laws prior to the time they became members of the Union, or **as approved by Congress** prior to May 22, 1953, provided that such boundaries may not extend more than three marine leagues from the coast line, as defined in and by the said act. This declaration of the President and the Congress was made subject to **no** rule of international law or rule adopted or followed by the State Department of the United States and certainly not a new rule announced after the passage of the Submerged Lands Act in an exchange of letters between the Attorney General and the Secretary of State especially concocted in order to make an assumed new case to circumvent the Congressional grants authorized under the special conditions spelled out in the Submerged Lands Act; it was made subject only to the state boundary descriptions as they existed at the time of statehood or **as approved by Congress** prior to the enactment of the Submerged Lands Act, that is, May 22, 1953. The Congress and the President, who compose the Political Department of the Government (Oetjen v. Central Lumber Company, 246 U. S. 297, text 302, 38 S. Ct. 309, 62 L. ed. 726, text 732), have, by the said Submerged Lands Act, approved a seaward boundary in the Gulf of Mexico of three marine leagues from the coast line, dependent only upon

state boundary descriptions existing at the time of statehood or at the time of approval by Congress prior to May 22, 1953.

Under the rule of this court in Oetjen v. Central Lumber Company, supra; United States v. Pink, supra; and United States v. Curtiss-Wright Corporation, supra, the Submerged Lands Act is the voice of the Political Department of the United States as well as the voice of the President as the "sole organ of the nation in its external relations, and its sole representative with foreign nations." Should there be a conflict with his views and the views of the State Department agents and officers, his views must and do control. The Submerged Lands Act, therefore, controls over the views of the Secretary of State, as expressed in his correspondence including the letter of September 8, 1958, attached to the Reply Brief as an exhibit.

Submerged Lands Act; boundaries defined.— The Submerged Lands Act determined and declared it "to be in the public interest that (1) title to and ownership of the lands beneath navigable waters **within the boundaries of the respective states,** and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop and use the said lands and natural resources," be recognized, confirmed, established and vested

in and assigned to the respective states (43 U. S. C. Supp. V, 1311), and provided that "any claim heretofore or hereafter asserted, either by constitutional provision, statute or otherwise, indicating the intent of a state so to extend **its boundaries** is hereby approved and confirmed without prejudice to its claim, if any it has, that **its boundaries** extend beyond that line," that is, beyond three geographical miles. (43 U. S. C. Supp. V, 1312). Nothing in section four of the act (43 U. S. C. Supp. V, 1312) "is to be construed as questioning or in any manner prejudicing the existence of **any state's seaward boundary** beyond three geographical miles if it was so provided by its constitution or laws prior to or at the time such state became a member of the Union, or if it has been heretofore approved by Congress." Other references are made in this act to state boundaries or state boundary lines.

The Submerged Lands Act itself provides that when used therein "the term 'boundaries' includes the seaward boundaries of a state or its boundaries in the Gulf of Mexico or any of the Great Lakes as they existed at the time such state became a member of the Union, or as heretofore approved by the Congress . . . but in no event shall the term **'boundaries'** or the term 'lands beneath navigable waters' be interpreted as extending from the coast line more than three geographical miles into the Atlantic Ocean or

Pacific Ocean, **or more than three marine leagues into the Gulf of Mexico."** (Emphasis supplied; 43 U. S. C., Supp. V, 1301). The Submerged Lands Act was introduced as H. R. 4198, First Session, 83rd Congress, and was the subject matter of House Report No. 215, of said session of Congress. From this report it appears that the term "boundaries" as used in said enactment included **"the historic boundaries of the states** in the Atlantic Ocean, the Pacific Ocean, **the Gulf of Mexico,** or any of the Great Lakes, as they were upon entrance of the state into the Union or as has been or shall be approved by Congress..." (Emphasis Supplied). The boundaries described by the Submerged Lands Act are the state's boundaries, either as they existed at the time of statehood, or as approved by the Congress prior to the effective date of the said act, that is, May 22, 1953. The Submerged Lands Act is not dependent upon any outside source, such as international law, rules of the State Department, common law or otherwise, for the meaning of the term "boundaries" as used therein; it is its own lexicographer. The term means the **historic boundaries** of the state, defined as the boundary under which it became a member of the Union or as approved by Congress prior to May 22, 1953.

Notwithstanding these definitions, contained in the Submerged Lands Act itself, the Govern-

ment contends that this Court is bound to follow the international seaward boundaries as found and ascertained by the State Department, by and through the Secretary of State, and that, the above mentioned statutory definitions should be construed as defining, permitting and authorizing nothing more than a three geographic mile seaward boundary. The defendant states, including the State of Florida, contend that the statutory definition was intended and should be followed in construing the said Submerged Lands Act.

Statutory definitions versus other definitions. —"The legislature may define certain words used in a statute, or declare in the body of the act the construction to be placed thereon, and the court is bound by such definition or construction, and will apply it, in accordance with the judicial decisions on the question without enlarging or diminishing the meaning provided by the statute, although otherwise the language would have been construed to mean a thing different from that contemplated by such statutory definition or rule of construction." (82 C. J. S. 536-538, Section 315; see also 50 Am. Jur. 254, section 262; Collins v. Texas, 223 U. S. 196, 32 S. Ct. 286, 56 L. ed. 439, text 444; Pampanga Sugar Mills v. Trinidad, 279 U. S. 211, 49 S. Ct. 308, 73 L. ed. 665, text 668; Fox Standard Oil Company, 294 U. S. 87, 55 S. Ct. 333, 79 L. ed.

780, text 786; Western Union Telegraph Company v. Lenroot, 323 U. S. 490, 65 S. Ct. 335, 89 L. ed. 414, text 423; Lawson v. Suwannee Fruit and Steamship Company, 336 U. S. 198, 69 S. Ct. 503, 93 L. ed. 611, text 615). Where Congress desires that words used in a statute should have other than their ordinary meaning, they should be given a special meaning by definition in the statute (National Labor Relations Board v. Highland Park Manufacturing Co., 341 U. S. 322, text 324 and 325, 71 S. Ct. 758, 95 L. ed. 969, text 977). Here the Congress has defined the term "boundaries", as used in the Submerged Lands Act, to mean a state's "boundaries in the Gulf of Mexico . . . as they existed at the time such state became a member of the Union, or as heretofore approved by the Congress . . .," and this without any reference to seaward boundaries under international law or as contended for by the State Department, or the Secretary of State, of the United States.

If the Congress, prior to May 22, 1953, approved the boundaries of a state as extending into the Gulf of Mexico more than three geographic miles from the "coast line" then such a boundary is controlling, even against international law or national boundaries as defined by the State Department or the Secretary of State. The point here to be determined, notwithstanding the letters of September 5 and 8, 1958, (Attach-

ed to the Reply Brief as exhibits, pages 97-99) and the construction placed upon them by the Government, is not one of international law or international boundaries, but one of statutory construction controlled by the definition of "boundaries" contained in the Submerged Lands Act itself.

Submerged Lands Act local not international in scope.—The United States, at the time of the enactment and approval of the Submerged Lands Act, was seized and possessed of the "paramount rights in, and full dominion and power over, the lands, minerals and other things underlying" the Gulf of Mexico "seaward of the ordinary low water mark" on the Gulf coast and outside of inland waters, extending seaward (United States v. California, 332 U. S. 19, 67 S. Ct. 1658, 91 L. ed. 1889; United States v. Louisiana, 339 U. S. 699, 70 S. Ct. 914, 94 L. ed. 1216; and United States v. Texas, 339 U. S. 707, 70 S. Ct. 918, 94 L. ed. 1221; and the Presidential Proclamation of September 28, 1945, 59 Stat. 884) for twenty-seven (United States v. Louisiana, 340 U. S. 899, 71 S. Ct. 275, 95 L. ed. 651) or more marine miles (United States v. Texas, 340 U. S. 900, 71 S. Ct. 276, 95 L. ed. 652). The United States, being possessed of such "paramount rights in, and full dominion and power over the lands, minerals and other things underlying" the Gulf of Mexico, transferred such rights in,

and dominion and power over, such lands, minerals and other things to the Gulf Coast States, within their historical boundaries (as defined in the act), by the Submerged Lands Act. "Dominium and imperium are normally separable and separate" (United States v. Texas, 339 U. S. 707, text 719, 70 S. Ct. 918, 94 L. ed. 1221, text 1228, citing Moore v. Smaw, 17 Cal. 199, 218, 219, 79 Am. Dec. 123); The Submerged Lands Act, by section six thereof, retains in the United States, imperium over the lands and navigable waters described by the said act necessary for regulation and purposes of commerce, navigation, national defense, etc., that is international purposes; however, these retained powers are not "deemed to include, proprietary rights of ownership, or the right of management, administration, leasing, use and development of the lands and natural resources," (section 6, Submerged Lands Act). These provisions amount to a finding and determination, by the Congress, approved by the President, that the property and property rights transferred and conveyed by the Submerged Lands Act to the states are not violative of international rights. The Submerged Lands Act is domestic and not international in its scope. The reference to "boundaries" in the Submerged Lands Act, as defined therein, was not for the purpose of fixing state boundaries as

such but was intended to measure the lands, minerals and other things conveyed and transferred from the United States to the Gulf Coast States.

Power of Congress over international law; the political departments.—The Congress, with the approval of the President, by section three of the Submerged Lands Act,

> "determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable **waters within the boundaries of the respective States,** and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;" (emphasis supplied)

Congress by the Act released and relinquished unto the coastal states, including the Gulf

States, "all right, title and interest of the United States, if any it has, in and to all said lands (lands beneath navigable waters within the **boundaries** of the respective States), improvements and natural resources . . . ." The lands released and conveyed by this portion of the Submerged Lands Act, notwithstanding any question of international law or views and findings of the State Department or Secretary of State as to International seaward boundaries of the United States, are those included within the "seaward boundaries of a State or its boundaries in the Gulf of Mexico . . . as they existed at the time such State became a member of the Union, or as heretofore approved by the Congress," that is, as approved by Congress prior to May 22, 1953. The admission of a state into the Union of itself is an approval of the boundaries of such state by the Congress, and approvals by Congress subsequent to admission is likewise included in the statute. The State of Florida contends that, notwithstanding the said letters of September 5 and 8, 1958, and the letters and documents to which they are supplemental, that Congress in and by the Submerged Lands Act fixed a seaward boundary in the Gulf of Mexico of three marine leagues, conditioned only upon the showing by the Gulf States or any of them, that their boundaries, at the time of statehood, or their boundaries as approved by Congress,

extended into the Gulf of Mexico more than three geographic miles but not more than three marine leagues, and this approval without regard to rules of international law as followed and contended for by the State Department or Secretary of State.

This Court, in **Oetjen v. Central Lumber Company,** 246 U. S. 297, text 302, 38 S. Ct. 309, 62 L. ed. 726, text 732, held that,

> "the conduct of foreign relations of our government is committed by the Constitution to the executive and legislative—'the Political' — departments of the government."

Here it is apparent that not merely the executive or state department, but also the legislative department, of the government together make up the "political department" of the United States Government.

Willoughby, in his work on Constitutional Law of the United States, Volume II, pages 1013 and 1014, section 588, states that the "principles of international law are subject to express modification by statute," and that, "in the very early case of The Charming Betsy, decided in 1804 (6 U. S. or 2 Cranch, page 64, 2 L. ed. 208) it seems to have been accepted that as a principle

not needing argument that the court would be bound by an act of Congress **providing a rule different from that laid down by international law** . . . ." (emphasis supplied)

In The Nereide, 13 U. S. (9 Cranch) 338, text 423, 3 L. ed. 769, text 780, this court held that "the court is bound by the law of nations, which is a part of the law of the land," till an act of Congress be passed conflicting therewith.

In **Foster and Elam v. Neilson,** 27 U. S. (2 Peters) 253, 7 L. ed. 415, text 433 and 434, this court stated that,

> "We think, then, however individual judges might construe the treaty of St. Ildefonso, it is the province of the court to conform its decision **to the will of the legislature,** if that will has been clearly expressed . . . . A question like this respecting the boundaries of a nation, is, as has been truly said, more a political than a legal question, and in its discussion, the courts of every country must respect the pronounced will of the legislature." (emphasis supplied)

The latter part of the above quotation was quoted with approval in Garcia v. Lee, 37 U. S. (12 Peters) 511, text 517, 9 L. ed. 1176, text 1178.

From the above authorities it is clear that whatever may be the rule established by a treaty with the United States, or by international law, Congress may enact legislation conflicting therewith and thereby adopt another and different rule. A rule adopted by the state department of a government stands on no higher plane than does a treaty or rule of international law. The State of Florida, one of the defendants herein, shows unto the Court that the Submerged Lands Act is such an act of the Congress, signed by the President conflicting with what the Government claims to be a rule of international law as urged by the Secretary of State.

Practice of single states. — The government, by its Reply Brief contends, at least in effect, that this Court is bound to follow the findings of the Secretary of State or State Department as to what the international law and international boundaries are; that is, the Government now contends that this Court is bound by executive pronouncements by the Secretary of State as to what the international boundaries of the United States are or have been in the past, that is the boundaries according to international law. These findings of the Secretary of State, including his letter of September 8, 1958, attached to the Reply Brief as an exhibit, are not findings as to what the international law is as to state

boundaries generally, but merely and only what the State Department now contends for and has contended for in the past. It seems well established that,

> "The practice of a single nation cannot change the rules of international law which rests on the common consent of all civilized communities." (30 Am. Jur. 439, section 4).

The law of the sea, including seaward boundaries,

> "Like all the laws of nations, it rests upon the common consent of civilized communities. It is of force, not because it was prescribed by any superior power, but because it has been generally accepted as a rule of conduct." (The Scotia, 81 U. S. or 14 Wall. 170, text 187, 20 L. ed. 822, text 826).

See also and to the same effect The Resolution, 2 Dallas 1, text 4, 1 L. ed. 263, text 264 and The Zamora (English Privy Council) 2 A. C. 77, text 91, 92 and 97, Ann. Cas. 1916E, 233, text 236 and 238.

It is the duty of a Court to decide judicially in accordance with what it conceives the law, including the law of nations or international law,

to be; this being true, "it cannot, even in doubtful cases, take its directions from the Crown" or Government, when the Crown or Government is a party to the proceedings before it. "It must itself determine what the law is according to the best of its ability, and its views, with whatever hesitation it may be arrived at, must prevail over any executive order." (The Zamora, supra). If this Court is to follow the findings of the State Department upon the question of seaward boundaries under the law of nations or international law, then this Court will be following executive pronouncements, made by other than the executive head of the government and in conflict with the Submerged Lands Act. The Secretary of State is merely and only an agent of the President in the administration of the State Department. Where there is a conflict in what his views are, on questions of international law and international relations, the views of the President, he being the head of the executive department, must control.

The law of nations or international law is to be determined from general use and practice among nations not the practice and usage of a few nations. When a practice is adopted by the general, although not universal, assent of nations, such practice may be said to become a part of the law of nations. The practices of a

single department of state cannot and does not fix a policy of international law; the practices of a single nation cannot fix a rule of international law. (The Antelope, 23 U. S. or 10 Wheat., 66, text 75, 6 L. ed. 268, text 271; United States v. Arredondo, 6 Peters 691, 8 L. ed. 547, and Hilton v. Guyot, 159 U. S. 113, 40 L. ed. 95.)

The views and practices of the Department of State of the United States, when not concurred in generally by other nations, do not constitute rules of international law binding upon this Court. The Government, by its Reply Brief, or by its Main and Reply Brief, has failed to show a rule of international law, as to international boundaries in the Gulf of Mexico, binding on this court. No reason has been shown, by the Government's Main and Reply Briefs, why the authorization of three marine league boundaries in the Gulf of Mexico are not valid.

Conclusion.—It follows from the above argument and authorities, that any finding or claim of international law, as ascertained and determined by the Secretary of State, as to international boundaries, including the boundaries mentioned in the Submerged Lands Act, is not binding upon the Court and determinative of the issues in this case; it is the Court's

duty and prerogative to ascertain and adjudicate what the international law is if the same is found to be involved.

Second point, as contended by the Government.—The boundaries of the Gulf States, as they existed at the time such states became members of the Union, or as approved by the Congress, prior to the Submerged Lands Act, must be determined by international law as determined and declared by the Secretary of State.

Florida's contention.—The State of Florida says that the above statement or point of law is an incorrect statement. The term "boundaries" as used in the Submerged Lands Act is defined by subsection (b) of section 2, of the said Act (43 U. S. C., Supp. V, 1301), and not by general law, international law, or otherwise. This point is argued above, in Florida's argument as to the first point, under the heading of "Statutory definition versus general definition." Briefly, Florida's right under the Submerged Lands Act is measured by the state's boundaries as they existed at the time of statehood, or as approved by Congress prior to May 22, 1953. These boundaries are in effect those approved by Congress, either at the time of statehood (through the statehood act specifically or by reference), or as

approved by Congress subsequently to statehood.

Boundaries of a state approved by Congress when admitted **to statehood.**—When New Mexico was admitted as a state in 1912, **its constitution set out its boundary.** This Court, in New Mexico v. Texas, 275 U. S. 279, text 302, 48 S. Ct. 126, 72 L. ed. 280, text 289, held that this boundary **"was confirmed by the United States by admitting New Mexico as a state with the line thus described as its boundary."** (Emphasis supplied.)

In Virginia v. Tennessee, 148 U. S. 503, text 521, 13 S. Ct. 728, 37 L. ed. 537, text 543, 544, this Court remarked that "where a state is admitted into the Union, notoriously upon a compact made between it and the state of which it previously composed a part, there the act of Congress admitting such state into the Union is an implied consent to the terms of the compact. **Knowledge by Congress of the boundaries of a state, and its political subdivisions, may reasonably be presumed . . . .**" (Emphasis supplied.)

When admitting a new state into the Union Congress must observe the constitutional restriction "that no new state shall be formed

within the jurisdiction of any other state, nor by the junction of two or more states, or parts of states, without the consent of such states as well as of the Congress." (Coyle v. Smith, 221 U. S. 559, text 566, 31 S. Ct. 688, 55 L. ed. 853, text 858). In order to comply with this restriction it is the duty of Congress to see that the description of the boundaries of a new state, at the time of its admission, includes no territory already included in another state. Congress, when admitting a new state, must in substance if not in fact approve the boundary of such a state. It seems quite evident that Congress, when it admits a new state into the Union, confirms or approves the boundary of such state. The knowledge of Congress as to the boundaries of a state, and even its political subdivisions, may reasonably be presumed when it admits such state into the Union.

Boundaries of a state approved by Congress subsequent to statehood.—The definition of "boundaries" as used in the Submerged Lands Act, clearly contemplates not only boundaries approved by Congress in connection with the admission of a state ("boundaries in the Gulf of Mexico . . . as they existed at the time such state became a member of the Union"), but also boundaries approved by Congress subsequent to statehood ("boundaries in the Gulf of Mex-

ico . . . as heretofore approved by Congress"). Such an approval subsequent to statehood, need not be an express and specific approval but may be an implied approval (see authorities cited on pages 16 and 17, Florida's Separate Brief).

Mr. Justice Jackson, in his dissent in Beauharnais v. Illinois, 343 U. S. 288, text 293, 72 S. Ct. 725, 96 L. ed. 919, text 947, in footnote 7, after stating that "Congress required that reconstructed states approve state constitutions consistent with the Federal constitution," makes reference to certain state reconstruction constitutions (including the Florida constitution of 1868) "which constitutions," in his words, "were nevertheless **approved by Congress.**"

This Court, in **Wilkes County Commissioners v. Cooler,** 180 U. S. 506, text 507, 45 L. ed. 642, text 643, had before it the North Carolina constitution of 1868, which, like the Florida constitution of 1868, had been prepared, approved and adopted pursuant to the reconstruction acts of Congress of 1867, and which had, like the Florida constitution of 1868, been submitted to Congress, concerning which this court stated that,

"The Convention that assembled at Raleigh, North Carolina, on January 14th,

> 1868, for the purpose of framing a Constitution for that state, concluded its labors on March 16th of the same year. The Constitution adopted by that body **was ratified April 24th, 1868,** and **was approved by Congress June 25th, 1868,** 15 Stat. at L. 73, chapter 70." (Emphasis supplied)

This Court, in White v. Hart, 80 U. S. or 13 Wall., 649, 20 L. ed. 687, had before it the Georgia state constitution, adopted pursuant to the reconstruction acts of 1867 (as was the Florida constitution of 1868), concerning which this court said,

> "... Congress authorized the state to frame a new Constitution, and she elected to proceed within the scope of the authority conferred. **The result was submitted to Congress as a voluntary and valid offering and was so received and so recognized in the subsequent action of that body .... The action of Congress upon the subject cannot be inquired into.** The case is clearly one in which the Judicial is bound to follow the action of the political department of the government, and is concluded by it ...." (Emphasis supplied.)

In **Texas v. White,** 74 U. S. or 7 Wall. 700, 19 L. ed. 227, it was stated that no proper restora-

tion of government was possible after the rebellion without a new election of officers, "and before any such election could be properly held it was necessary that the old Constitution should receive such amendments as would conform its provisions to the new conditions created by the emancipation, and afford adequate security to the people of the state," and that in the light of these conditions,

> "the President of the United States issued his proclamation appointing a provisional Governor for the state and providing for the assembling of a convention, with the view to the reestablishment of a republican government, **under an amended Constitution**, and to the restoration of the state to her proper constitutional relations . . . ."

This opinion shows that Congress had in mind, when it enacted the reconstruction acts of 1867, the formation and adoption of complete state constitutions agreeable to the views of Congress, not the adoption of mere parts or parcels of state constitutions. Similar views were expressed by the courts in Cunningham v. Skiriotes, 110 Fed. 2d 635 and Pope v. Blanton, 10 Fed. Supp. 18.

New state constitutions necessary for rebel states.—When the Civil War terminated in 1865

the Southern states, including Florida, were without efficient and sufficient governments, so "it became the duty of the United States to provide for the restoration of such a government. But the restoration of the government which existed before the rebellion, without a new election of officers, was obviously impossible; and before any such election could be properly held, it was necessary that the old Constitution should receive such amendments as would conform it to the provisions of the new conditions created by emancipation, and afford adequate security to the people of the state" (see Texas v. White, 74 U. S. or 7 Wall. 700, text 729, 19 L. ed. 227, text 239). These conditions prompted the Congress to enact the Acts of March 2, and 22, 1867 (14 Stat. 428 and 15 Stat. 1), known as the reconstruction acts, making provision for the formation and adoption of new state constitutions and their submission to Congress for approval. Pursuant to these reconstruction acts the "President of the United States issued his proclamation appointing a provisional Governor for the state and providing for the assembling of a convention, with a view of the reestablishment of a republican government, under an amended constitution, and to the restoration of the state to her proper constitutional relations. A convention was accordingly assembled, the Constitution amended,

elections held, and a state government acknowledging its obligations to the Union, established." (Texas v. White, supra). It seems clearly evident that Congress, by its acts of 1867, contemplated new complete state constitutions for the rebel states covering all phases of constitutional government. Such constitutions were submitted to Congress so that Congress might determine that such constitutions were complete and efficient forms of government before the states were to be readmitted to representation in the Congress. There was little if any difference in the purposes of Congressional examination and approval of the state constitutions of the rebel states under the Acts of 1867 and a Congressional examination and approval of the constitution of a new state. The **"knowledge by Congress of the boundaries of a state, and its political subdivisions, may reasonably be presumed,"** as to the constitutions of the rebel states as well as to the constitutions of new states (Virginia v. Tennessee, 148 U. S. 503, text 521, 13 S. Ct. 728, 37 L. ed. 537, text 543-4; and New Mexico v. Texas, 275 U. S. 279, text 302, 48 S. Ct. 126, 72 L. ed. 280, text 302). No reasonable body of men "approving" a state constitution, although of one of the rebel states, would or could have limited themselves to the reconstruction aspect alone nor could they have avoided the clear statement in the Florida Con-

stitution of 1868 itself, as to the state boundaries. It is inconceivable that Congress did not examine all provisions of the said constitution.

Conclusion.—We do not think that "boundaries," as used by the Submerged Lands Act, is controlled by international law or general definitions of the term, but must be given the definition accorded it by the Submerged Lands Act itself. This is not a question of international law, but a boundary description of property and property rights conveyed and transferred by the Submerged Lands Act. The act refers to boundary descriptions in state constitutions or statutes, at time of statehood or as approved by Congress, without regard to rules of international law. The conveyance is of property claimed by the United States, as defined by the Submerged Lands Act, without regard to international boundaries. The conveyance and transfer is of property and property rights claimed by the United States, without regard to its location, to the coastal states. The question is one of property and its conveyance and transfer and not of international boundaries or law.

The letter of the Secretary of State, exhibited in the Government's Reply Brief, fails in its eleventh hour purpose to interject into the case

overriding international political determinations and considerations, and this is so despite current foreign crises which will probably always be with us. Under clear and unquestioned precedents enunciated by this Court the attempted interjection of the extraneous issue of international law has no place. The Submerged Lands Act, in and of itself, spells out the guidelines of the grant and not the assumed hypothetical postulates of the Secretary of State.

GENERAL CONCLUSION

It appears from the above and foregoing argument, and the statutes and authorities cited and referred to, that the Congress, in and by the Submerged Lands Act of 1953, made a specific and definite grant of lands, minerals and other things to the coastal states, measured, in the Gulf of Mexico, by the boundaries of the Gulf States as they existed at the time they became members of the Union or as approved by the Congress prior to the enactment and approval of the said Submerged Lands Act. The state boundaries referred to in the said act are those under which the states were admitted into the Union, or as approved by the Congress prior to May 22, 1953, not those claimed by the Secretary of State or State Department for international purposes. The grant in the Submerged Lands Act is not measured by international law or the foreign policy of the Secretary of State or the State Department, but by the "boundaries" as described and defined in and by the said Submerged Lands Act. Foreign Policy does not enter into the determination, for the purposes of the grant made by the Submerged Lands Act, of the boundaries as defined by the said act. The applicable boundaries are those existing at the time the State became a member of the Union (43 U. S. C. 1301) defined by the act (43 U. S. C. 1312) as those "asserted either

by constitutional provision, statute or otherwise indicating the intent of a state so to extend its boundaries" which was by the said act approved and confirmed; or those approved by the Congress prior to May 22, 1953. Congress clearly approved the Florida Constitution of 1868, within the purview of the Submerged Lands Act, including its seaward boundary, in the Gulf of Mexico, therein described. Florida clearly acquired title, under the Submerged Lands Act, to the submerged lands, minerals and other things lying between the low-water mark along the shore and the inland waters and a line located three marine leagues seaward from such low-water mark and inland waters. Florida has a three marine league boundary in the Gulf of Mexico.

Respectfully submitted,

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I, Richard W. Ervin, Attorney General of Florida, certify that on the 6th day of November, 1958, I mailed copies of the foregoing motion and brief to the Attorney General and the Solicitor General of the United States, respectively, at the Department of Justice Building, Washington, D. C., and on the 6th day of November, 1958, copies were mailed to the Attorneys General of the States of Texas, Louisiana, Mississippi and Alabama.

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